

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

NATHANIEL WARD-EL,

Plaintiff,

Case No. 15-cv-10238

v

Honorable Thomas L. Ludington
Magistrate Judge Stephanie Dawkins Davis

JAMES LUCKY, et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S
MOTION TO DISMISS AS MOOT, AND DISMISSING PLAINTIFF'S COMPLAINT
WITHOUT PREJUDICE**

Plaintiff Nathaniel Ward-el, a prisoner, filed this *pro se* civil rights action on January 21, 2015. Plaintiff alleges that Defendants James Lucky, Lacy O'Connor, Willie Riley, Penny Landrum, and Mashawn Campbell, employees of the Cooper Street Correctional Facility (JCS), violated his rights under 42 U.S.C. §§ 1983, 1985, and 1986 by conspiring to retaliate against him for engaging in protected conduct under the First Amendment. ECF No. 1. Specifically, Ward-el alleged that after he expressed intent to notify authorities of staff corruption at the jail facility, Defendant Library Technician Lucky issued him a false Class II misconduct violation for being out of place on August 17, 2012. Ward-el claims that after he filed a grievance against Lucky on August 20, 2012 Defendants then conspired to transfer him in retaliation. *Id.*

On March 23, 2015 Defendants filed a joint motion for summary judgment. ECF No. 9. On April 27, 2015, Plaintiff Ward-el filed objections to Defendants' motion for summary judgment. ECF No. 18. He also filed a motion to dismiss Defendant Lacey O'Connor from the action. ECF No. 16.

On March 10, 2016, Magistrate Judge Stephanie Dawkins Davis issued a report recommending that Defendants' motion for summary judgment be granted and Ward-el's motion to dismiss be denied as moot. ECF No. 23. Judge Dawkins reasoned that Defendants had carried their burden of showing that Plaintiff Ward-el had failed to exhaust his administrative remedies under 42 U.S.C. §1997e(a). She therefore recommended dismissing Plaintiff's complaint without prejudice.

Although Magistrate Judge Dawkins's report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendants filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 23, is **ADOPTED**.

It is further **ORDERED** that Defendants' motion for summary judgment, ECF No. 9, is **GRANTED**.

It is further **ORDERED** that Plaintiff Ward-el's motion to dismiss, ECF No. 17, is **DENIED as moot**.

It is further **ORDERED** that Plaintiff Ward-el's complaint, ECF No. 1, is **DISMISSED without prejudice**.

It is further **ORDERED** that permission to proceed *in forma pauperis* on appeal is **DENIED**. An appeal would be frivolous and could not be taken in good faith. *See* 28 U.S.C. §1915 (a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 30, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 30, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager